

## **RULE**

### **Department of Health and Hospitals Board of Medical Examiners**

#### **Enforcement Terms; Unprofessional Conduct (LAC 46:XLV.7601-7605)**

The Louisiana State Board of Medical Examiners, pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., has amended its administrative rules governing physician practice, LAC 46:XLV, Subpart 3 (Practice), by adopting Subchapter 76, §§7601-7605 (Definition of Enforcement Terms). The rules are set forth below.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Professions**

##### **Subpart 3. Practice**

#### **Chapter 76. Definition of Enforcement Terms**

##### **Subchapter A. General Provisions**

##### **§7601. Scope of Chapter**

A. The board has the responsibility to consider and determine action upon all charges of conduct which fail to conform to the Louisiana Medical Practice Act, R.S. 37:1261-1292 et seq., as re-enacted and amended, and the rules and regulations promulgated by the board to carry out the provisions of this Part. The rules of this Chapter compliment the board's authority to deny, suspend, revoke or take such other action against a physician's license, as it may determine to be appropriate, pursuant to R.S. 37:1285.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:336 (January 2011).

##### **Subchapter B. Unprofessional Conduct**

##### **§7603. Unprofessional Conduct**

A. In the exercise of its duties the board has determined to define the term *unprofessional conduct*, as set forth in R.S. 37:1285(A)(13), as conduct that includes but is not limited to the departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice or the ethics of the medical profession including, but not limited to, the principles established by the American Medical Association, the American Osteopathic Association, and relevant medical specialty associations, or the commission of any act contrary to honesty, justice, good morals, patient safety or the best interest of the patient, whether committed in the course of the physician's practice or otherwise, and whether committed within

or without of this state. For illustrative purposes only, *unprofessional conduct* includes but is not limited to:

1. *Sexual Misconduct*—any act of sexual intimacy, contact, exposure, gratification, abuse, exploitation or other sexual behavior with or in the presence of a patient or any other individual related to the physician's practice of medicine regardless of consent. Such conduct may be verbal, physical, visual, written or electronic, or it may consist of expressions of thoughts, feelings or gestures that are sexual or reasonably may be construed by a patient or other individual as sexual or which may reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient or another individual. Sexual misconduct between a physician and a former patient after termination of the physician-patient relationship may also constitute *unprofessional conduct* if the sexual misconduct is a result of the exploitation of trust, knowledge, influence or emotions derived from the professional relationship;

2. *Disruptive Behavior*—aberrant behavior, including but not limited to harassment, sexual or otherwise, manifested through personal interaction with physicians, employees, co-workers, hospital personnel, health care professionals, patients, family members or others, which interferes with patient care or could reasonably be expected to interfere with the process of delivering quality care or jeopardizing patient safety;

3. *Failing to Cooperate with the Board*—physicians shall cooperate with and assist the board to carry out its duties. A physician shall, among other matters:

a. respond or provide information or items requested, respond to a subpoena, or complete an evaluation within the time designated by the board or its staff;

b. not attempt to influence the board, its members, staff or agents by means of intimidation, falsehoods or other means prohibited by law;

c. not contact members of the board directly or through others in an attempt to influence the outcome of an investigation or disciplinary proceeding; and

d. not contact or attempt to contact a complainant or witness regarding a complaint or an investigation by the board for purposes of intimidation or harassment;

4. *Failing to Maintain Independent Medical Judgment*—at all times while engaged in the practice of medicine in this state a physician shall exercise independent medical judgment in the sole interest of the patient. To that end a physician shall not:

a. allow a non-physician to impose or substitute his, her, or its judgment for that of the physician in the exercise of the rights and privileges provided for by medical licensure; or

b. enter into or attempt to enforce an agreement that would have the effect of requiring a physician to abandon a patient, deny a patient continuity of care, or interfere with the patient's freedom of choice in the selection of health care providers or services;

5. *Improperly Delegating or Supervising*—physicians retain responsibility to their patients for the training, delivery and results of medical services rendered to their patients. A physician shall not:

a. delegate professional responsibilities to a person the physician knows or has reason to know is not qualified by training, experience or licensure to perform them; or

b. fail to exercise appropriate supervision over a person who is authorized to practice only under physician supervision;

6. *Exercising Undue Influence*—physicians shall exercise their professional judgment in the best interest of their patients. A physician shall not:

a. place his or her own financial gain over the interest and welfare of a patient in providing, furnishing, prescribing, recommending or referring a patient for therapy, treatment, diagnostic testing or other health care items or services;

b. perform, or refer a patient to another to perform, unnecessary tests, examinations or services which have no legitimate medical purpose; or

c. exercise influence over a patient in such a manner as to exploit the patient or his or her third party payor for financial gain of the physician or of a third party through the promotion or sale of services, goods, appliances or drugs;

7. *Enabling the Unauthorized Practice of Medicine*—A physician shall insure that he or she is practicing in conformity with the law and in a lawful setting. A physician shall not:

a. enter into any arrangement, as medical director or otherwise, that allows or condones an unlicensed individual to engage in the practice of medicine, as defined by R.S. 37:1261(1), in the absence of the physician's direction and immediate personal supervision—i.e., where the physician is physically present on the premises at all times that the unlicensed individual is on duty and retains full responsibility to patients for the training, delivery and results of all services rendered; or

b. practice in a pain management clinic that is not licensed by the Department of Health and Hospitals pursuant to R.S. 40:2198.11 et seq., or in any other clinic or medical setting that the physician knows or reasonably should know, is operating in violation of the law or the board's rules;

8. *Practicing or Enabling Practice by Impaired Provider*—a physician shall not:

a. engage in the practice of medicine while under the influence of a mood-altering substance that compromises or has the potential to compromise a

physician's medical judgment or practice, irrespective of whether or not prescribed by another physician or authorized practitioner; or

b. prescribe any mood-altering substance to a patient, who is a physician or another licensed health care provider, without instructing the patient to refrain from practice while under the influence of the substance. The physician's record on the patient shall document this instruction;

9. *Failing to Adhere to Accepted Practices*—Physicians shall practice within the scope of their education, training and experience;

10. *Failing to Create or Maintain Medical Records*—a physician shall create and maintain adequate and legible patient records. In addition, a physician shall:

a. not falsely create or alter a medical record or destroy a medical record except as authorized by law;

b. upon receipt of proper authorization, and in conformity with R.S. 40:1299.96, make patient medical records in the physician's possession available within a reasonable period of time to the patient, the patient's representative, or another physician or licensed health care provider;

c. make arrangements for patient access to medical records of the physician after relocating or closing a medical practice, retiring, or being prohibited from practice by consent, decision or other order of the board;

d. make arrangements, or assist another physician practicing in the same group make arrangements, for access by a physician or patients to their medical records after the physician has left a medical practice, relocated a practice to a new location, closed a practice, or retired;

e. insure proper destruction of medical records by methods approved by state or federal authorities; and

f. not abandon or desert medical records.

B. By implementing the meanings set forth hereinabove, the board does not intend to restrict and indeed reserves unto itself its authority and right to take action based upon R.S. 37:1285(A)(13), in any instance in which the particular facts and circumstances of a complaint, investigation or adjudication rise to a level of conduct that it may, in its discretion, determine constitutes unprofessional conduct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:336 (January 2011).

#### **§7605. Effect of Violation**

A. Any violation or failure to comply with the provisions of this Subchapter shall be deemed unprofessional conduct and conduct in contravention

of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), providing cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:337 (January 2011).

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